

CALIFORNIA COASTAL COMMISSION

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A-3-SLO-99-014 Filed: 02/24/99
A-3-SLO-99-032 Filed: 04/27/99
A-3-SLO-99-014 49th Day: 04/14/99
A-3-SLO-99-032 49th Day: 06/15/99
Staff: SM-SC
Staff Report: 09/22/99
Hearing Date: 11/03/99
Commission Action: A-3-SLO-99-014 Opened and Continued on 04/14/99; Substantial Issue Determination for both appeals postponed by applicant from 06/08/99 hearing; hearing on both appeals continued by Commission on 8/11/99

COMBINED STAFF REPORT: TWO APPEALS SUBSTANTIAL ISSUE DETERMINATIONS AND DE NOVO REVIEW

LOCAL GOVERNMENT: San Luis Obispo County

DECISION: On September 15, 1995¹, the San Luis Obispo County Subdivision Review Board conditionally approved COAL 94-130 for the lot line adjustment. On January 26, 1999, the San Luis Obispo County Board of Supervisors approved Development Plan/Coastal development Permit D970195D for grading and roadway construction to serve the adjusted lots.

APPEALS: **A-3-SLO-99-014 and A-3-SLO-99-032**

APPLICANT: **Morro Bay Limited**

AGENT: Dan Lloyd, Engineering Development Associates

APPELLANTS: David McBride, Commissioners Wan and Nava (A-3-SLO-99-014); Commissioners Wan and Potter (A-3-SLO-99-032)

LOCATION: West of Highway One, approximately 3 miles south of Harmony and 6 miles north of Cayucos, in the Agriculture land use category of the San Luis Obispo County North Coast Planning Area (APNs 046-082-013 through 046-082-022)

¹ The Commission did not receive a Notice of Final Local Action for this decision until April 23, 1999.

- DESCRIPTIONS:** San Luis Obispo County, A-3-SLO-99-032 approved the adjustment of 10 lots ranging in size from 1.39 acres to 318.42 acres into 8 residential lots ranging in size from 20.9 acres to 54.9 acres, and two agricultural lots of 243.8 and 226.4 acres. A-3-SLO-99-014 involves the grading and construction of approximately 19,860 linear feet (4.76 miles) of access roads to serve the adjusted lots, and relocation of two of the building sites designated by the lot line adjustment. As recently revised by the applicant, the lot line adjustment will result in 8 residential parcels ranging in size from 20 acres to 39.06 acres, and one agricultural lot of 542.08 acres. The revised project also includes offers to dedicate a lateral and vertical coastal access easement, a deed restriction that limits use and development of 684.55 acres of the site to agricultural and resource conservation purposes, and a reduction in the roadway project of 5,350 feet.
- FILE DOCUMENTS:** San Luis Obispo County Certified Local Coastal Program; San Luis Obispo County Final Local Action Notices 3-SLO-99-011 and 3-SLO-99-046; July 20, 1999 letter from Sheppard, Mullin, Richter & Hampton (Exhibit 3) describing project revisions, and accompanying maps, documents, and data submitted by Engineering Development Associates

EXECUTIVE SUMMARY

Staff recommends that the Commission conditionally approve Coastal Development Permits for the revised lot line adjustment and roadway projects.

The appealed projects consist of a lot line adjustment (A-3-SLO-99-032) and roadway construction project (A-3-SLO-99-014) intended to facilitate future residential development on nine lots currently in single ownership, on a 746-acre agricultural site west of Highway One (*Middle Ranch*). The project site, which has historically been used for cattle grazing, is approximately 3 miles south of Harmony, and about 6 miles north of the town of Cayucos, in a rural agricultural area of San Luis Obispo's North Coast (Exhibits 1 and 2).

San Luis Obispo County approved the adjustment of 10 lots ranging in size from 1.39 acres to 318.42 acres into 8 residential lots ranging in size from 20.9 acres to 54.9 acres, and two agricultural lots of 243.8 and 226.4 acres (shown by Exhibit 7). The residential lots would be generally located along the coastal ridge on the western portion of the property, while the agricultural parcels would comprise the area of the site east of the residential parcels. Approximately 4.8 miles of grading and construction of roadway was approved to serve the residential building sites.

The County-approved projects were appealed by the Commission because the approved residential lot configuration and associated road construction raised compliance questions concerning the preservation of rural agricultural lands, scenic public views, and sensitive wetlands. Further evaluation has also established that the existing agricultural lots, as currently configured, do not meet the LCP's minimum size of 320 acres for grazing, and are also arranged in a pattern that would limit the long-term agricultural viability of the site should these individual lots be sold and pursued for residential or other allowable non-agricultural development.

In response to the appeals and Commission concerns, the applicant has reduced the size of the 8 residential parcels (Parcels 1 – 8) so that they range between 20 acres and 39.06 acres, and has consolidated the two agricultural lots into a single agricultural lot (Parcel 9) of 542.08 acres (please see Exhibit 4). In addition, as currently proposed, use of the 8 residential parcels will be limited to building envelopes totaling 10.69 acres of the site and range in size from 0.23 to 1.92 acres each. Road construction has been reduced by approximately 1 mile and relocated to protect sensitive wetlands.

Another significant revision to the lot line adjustment and roadway projects that has occurred since the County's approval is the incorporation of offers to dedicate both a lateral shoreline access easement across all 9 lots, and a vertical access easement from Highway One to the mean high tide, along the northern boundary of the project site.

Commission staff has also worked with the applicant to develop restrictions on future site development, including specific siting and design criteria to protect visual resources (Condition 3i). These restrictions include:

- Agricultural setback areas surrounding the residential building envelopes that total 50.72 acres of the site and range in size from 2.95 acres to 13.75 acres each. The purpose of these setback areas is to provide a buffer between future residential development and agricultural use of the site. No structural development, other than that which is directly related to agriculture or resource conservation, is allowed within this setback area.
- The remainder of the residential lots (144 acres), as well as all areas of Parcel 9 outside of the building envelope (540.65 acres) will be deed-restricted for agricultural and resource conservation purposes. Within these areas, only those uses and development directly related to the cultivation of agricultural products for sale, and/or the protection and enhancement of natural and archaeological resources, is allowed. Structural development within the agricultural and resource conservation area is limited to agricultural accessory structures, and fencing to separate incompatible agricultural uses or to protect resource areas (e.g., wetlands). One

exception to this rule is the allowance of a corral in a specific area of Parcel 9 that will be available for the joint use of the owners of the 9 lots.

- All future development will need to comply with siting and design criteria to protect views from public viewing areas, including state waters. Specifically, development must be designed to blend in with and be subordinate to the natural landscape, including limiting height and vertical features above ridgelines; using earthtones and non-reflective materials; and limiting exterior lighting (see Condition 3i for more detail)

Finally, as required by the LCP, future site development will be subject to future Coastal Development Permit review and approval. In addition, the recommended conditions of approval require the applicant to submit a Storm Water Pollution Prevention Program for Executive Director review and approval, to ensure that water quality and wetland habitats are effectively protected during roadway construction. The conditions also require evidence that the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Regional Water Quality Control Board, and Department of Fish and Game have reviewed and approved the roadway project, or that no such approvals are required. This is necessary to ensure that the roads will not result in any wetland fill, and that any impacts to water quality or sensitive species associated with the replacement of the existing bridge over Ellysly Creek are appropriately addressed. Should any additional wetland areas be documented on the property through the U.S. Army Corps of Engineers review, confirmation that the roadways do not encroach 100 feet of any such wetlands, or revised roadway plans that comply with this setback requirement, must be submitted for Executive Director review and approval.

Overall, while the proposed lot line adjustment would not resolve the fundamental problem of non-conforming lots within an agricultural zone, it would reconfigure the lots in a manner that consolidates non-agricultural (residential) uses outside of the most agriculturally productive area of the site (684.5 acres or 92% are limited to agricultural use). Staff has considered alternative parcel configurations to that which was proposed by the applicant, and determined that in light of the site's environmental constraints (e.g., soils, views, topography, wetlands) there are no feasible alternatives that would better protect the agricultural, scenic, archaeological, and natural resources of the site, while allowing for residential development on the nine lots.

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I. SUMMARY OF APPELLANTS' CONTENTIONS

Please see Exhibit 1 for the full texts of the appeals.

The appeal of the lot line adjustment by Commissioners Wan and Potter contends that the project conflicts with LCP standards protecting agricultural and visual resources, as well as those requiring evidence that there are adequate on-site water and wastewater treatment capacities available to serve future residential development proposed to be accommodated by the lot line adjustment. More specifically, the Commissioners' appeal asserts that the project does not comply with LCP Policies 1 and 2 for Agriculture, or with Sections 23.04.024b, 23.04.024e(f), 23.04.021c, 23.04.050, and 23.04.430b of the Coastal Zone Land Use Ordinance (CZLUO). The appeal also questions project conformance with CZLUO Section 23.04.420, requiring vertical and lateral coastal access, as neither were provided by the original project or required by the County's approval.

The appeal of the roadway project by Commissioners Wan and Nava contends that the proposed roadway development will result in greater site disturbance than necessary to accommodate the proposed use of the site, and that portions of the proposed roadways will

be located within 100 feet of an existing wetland, inconsistent with sections 23.05.030e.1 and 23.07.172a of the CZLUO.

David McBride's appeal of the roadway project contends that "the project does not conform with Local Coastal Area Planning Standards" because "the designated ridgetop building sites are visible to the public and require development on some of the steepest and most fragile areas of the property". Mr. McBride's appeal also states that "development plans have been offered in a piecemeal fashion, avoiding the next obvious issues of constructing multiple driveways and other infrastructure on steep and erosive slopes".

II. LOCAL GOVERNMENT ACTION

On September 10, 1998, the San Luis Obispo County Planning Commission conditionally approved Development Plan/Coastal Development Permit D970195D for the grading and construction of roadways, and for the adjustment of two building sites designated by the previous lot line adjustment. This decision was appealed to the Board of Supervisors, where on January 26, 1999, the appeal was denied and the Planning Commission's conditional approval was upheld. The conditions of this approval are attached as Exhibit 2.

Upon receiving notice of this action, Commission staff investigated the history of the project, and determined that lot line adjustment associated with D970195D (COAL 94-130, approved by the San Luis Obispo County Subdivision Review Board on September 11, 1995) had not been properly noticed. According to the Commission's records, the County did not provide the Notice of Final Local Action required by Section 23.02.039 of the CZLUO and Section 13110 of the Commission's Administrative Regulations before a coastal development permit can become effective. As requested by Commission staff, the County provided such notice, received by Commission staff on April 23, 1999.

The County's review of the lot line adjustment and the roadway project (which also included a minor revision to one of the building envelopes previously identified in the lot line adjustment) included analyses of the projects impacts on views from Highway One, marine mammals, wetlands, and archaeological resources. Through this review, the building envelopes were oriented to not be visible from Highway One², and conditions were placed on the project that prohibit any human use areas from being established where they may be seen from known marine mammal haul-out areas along the shoreline. In addition, an archaeologically sensitive area of the site, adjacent to the main access road was identified and required to be protected by retaining an archaeologist to observe all earth disturbing activities in this area. Other notable aspects of the local approval include:

² Because the building envelopes on parcels 5 and 6 might have been partly visible from Highway One, the County's approval required landscaping at the entrance to the property that will prevent future development of these lots from being visible.

- requirements that: no development shall occur within 800 feet of the edge of a bluff (local condition 3c);
- limitations for development within the envelopes of Parcels 1 and 2 that prohibit rooflines from extending more than 10 feet above the grade of the saddle and require that roof forms be shaped similarly to the natural topography (local condition 3o);
- all units shall be limited to a height of 22 feet above natural grade, and provide articulated roof forms which follow the general shapes of the hills and avoid flat planes which project against the sky in long straight lines or acute angles. Areas adjacent to structures must be landscaped to cover exposed ground surfaces, cut faces and retaining walls (local condition 3r);
- no ancillary structures may be constructed in areas that are visible from Highway 1 or the coastline (local condition 3t);
- the applicant must disclose to all prospective buyers that nearby ranchlands may generate dust, noise, odors, and agricultural chemicals. The applicant must also disclose the importance of controlling domestic pets to prevent conflicts with agricultural activities. All deeds shall be recorded with the County's Right to Farm Ordinance (local conditions 3z and 4).

The entirety of the local conditions of approval, for both the lot line adjustment and the roadway project, are attached to this report as Exhibit 14. As recommended by staff, Special Condition 1 identifies that these local conditions of approval continue to apply to the projects, except where they conflict with the project revisions proposed by the applicant and the conditions of the Coastal Commission's approval.

III. STANDARD OF REVIEW FOR APPEALS

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. Both the roadway project and lot line adjustment are appealable because they are between the first public road and the sea, and are partly located within a Sensitive Resource Area designated by the LCP.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the nearest public road and the sea; thus, this additional finding must be made in a *de novo* review in this case.

IV. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS

The appeals raised a substantial issue, because as approved by the County, the projects are inconsistent with provisions of the San Luis Obispo County certified Local Coastal Program (LCP) protecting agricultural and scenic resources. The lot configuration approved by the County allows for the conversion of an excessive amount of the site’s agricultural land to non-agricultural (residential) uses, thereby diminishing the agricultural productivity of the site and setting a precedent for non-agricultural development that may adversely affect the long-term viability of agriculture in the region. In addition, the lot configuration and proposed building sites will allow for future residential development that may be visible from Highway 46, the coastline, and the ocean, causing adverse impacts to the scenic open space qualities of the area. Finally, a substantial issue was also raised by the lack of provisions for public access to and along the coast, as required by both the LCP and the Coastal Act. These issues are explained in more detail in the De Novo findings of this staff report.

V. STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT

Staff recommends that the Commission, after the public hearing, approve the Morro Bay Limited permits with conditions.

MOTION. Staff recommends a “YES” vote of the following motion:

I move that the Commission **APPROVE** Coastal Development Permits A-3-SLO-99-014 and A-3-SLO-032 subject to the conditions below.

RESOLUTION.

The Commission hereby **grants** a permit for the proposed development, subject to the conditions below, on the grounds that the development, as conditioned, will be in conformity with the provisions of the San Luis Obispo County certified Local Coastal Program, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

VI. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

VII. SPECIAL CONDITIONS

1. Scope of Permits. These permits authorize, subject to the standard conditions above and the Special Conditions below, the lot line adjustment and roadway construction illustrated by the Revised Lot Configuration Plan prepared by Engineering Development Associates dated July 12, 1999 (attached as Exhibit 4). Grading, drainage, and roadway details approved by Permit A-3-SLO-99-014 are illustrated by the roadway plans prepared by Garing Taylor and Associates dated November and December 1997, subject to the revised configuration and roadway reductions identified by Exhibit 4. Except where in conflict with the revised project approved by these permits, and these conditions of approval, all conditions of San Luis Obispo County's approval of these projects (attached as Exhibit 14) continue to apply. All other conditions required pursuant to planning authority other than the Coastal Act continue to apply.

2. Amended Certificates of Compliance. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the landowner shall submit, for Executive Director review and approval, amended Certificates of Compliance which reflect the revised lot line adjustment approved by Permit A-3-SLO-99-032.

3. Deed Restrictions. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall finalize, execute, and record, in a form and content acceptable to the Executive Director, a Deed Restriction for each of the newly configured parcels which limits future use and development of each parcel according to the specific provisions listed below. The Deed Restrictions shall include legal descriptions of the parcel being restricted, as well as legal descriptions for the portions of the parcel that are designated as Agricultural and Resource Conservation Areas, Agricultural Setback Areas, and Building Envelopes (shown by Exhibit 4). These Deed Restrictions shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This Deed Restrictions shall not be invalidated or changed without a Commission amendment to this coastal development permit.

The Deed Restrictions shall provide for the following:

- a. A prohibition against future subdivisions.
- b. Recordation of a right to farm statement that states "This parcel is adjacent to property that is used, or planned to be used, for agricultural purposes. Residents may be subject to inconvenience or discomfort arising from the use of agricultural chemicals, including herbicides, pesticides, and fertilizers, and from the pursuit of agricultural operations, including animal grazing, plowing, spraying, pruning and harvesting, which

occasionally generate dust, smoke, noise, and odor. San Luis Obispo County and the State of California has established agriculture as a priority use on productive agricultural lands, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary farm operations.”

- c. A prohibition against locating any new structures on prime soils.
- d. The following definition of agricultural production activities:

Agricultural production activities are those directly related to the cultivation of agricultural products for sale. Agricultural products are limited to food and fiber in their raw unprocessed state, and ornamental plant material.
- e. Acknowledgement that all future development activities on the site, including, but not limited to residential construction and installation of fencing will be subject to future coastal development permit review by San Luis Obispo County and/or the Coastal Commission. As part of this review, it shall be confirmed that any water extractions necessary to serve non-agricultural uses shall not adversely effect wetland and riparian habitats on the site, nor limit opportunities for continued or expanded agricultural uses.
- f. Measures to ensure that agricultural and development activities will be conducted in a manner that protects the archaeological resources of the site. These measures shall include, but not be limited to, ensuring that a qualified archaeologist shall be on-site to monitor any agricultural activity or development that involves subsurface disruptions. At least 15 days prior to undertaking any such activity or development, the applicant shall notify the cultural resource representative of the Chumash Tribe, and provide the Chumash representative with the opportunity to observe the activity or development. If either the archaeologist or Chumash representative identifies that the activity or development is uncovering archaeological or paleontological resources, all activities that may impact such resources shall cease until appropriate mitigation measures are reviewed and approved by the State Historic Preservation Office and the Executive Director of the Coastal Commission.
- g. Recognition that nothing in the Deed Restriction shall limit the public’s right to vertical and lateral access across the site that may be established through easements, prescriptive rights, or other legal means.
- h. Specific criteria for the installation of fencing, and the type of fencing allowed. Fencing shall be allowed only to: mark the exterior boundary of Parcel 9 with Highway One and the properties to the north and south of the project; mark the exterior boundary of lots 1 and 2 with the property to the south of the project; separate non-compatible agricultural uses; protect sensitive natural resources (i.e., wetlands or other habitats for rare plants or animals); or, to separate lateral and vertical coastal access easements from agricultural or resource protection activities. Any fencing installed in order to separate non-compatible agricultural activities shall be removed immediately upon the termination of one of the non-compatible activities.

All allowable fencing shall be located at least 100 feet from the edge of any wetland, except where the roadway approved by A-3-SLO-99-014 encroaches within 100 feet of the wetland; in that area, the fence shall be located as close to the road as possible, but in no case any more than 5 feet from the roadway shoulder. All fence posts shall be constructed of 4-inch diameter wood posts, colored a natural earth tone color approved by the Executive Director, and limited to a maximum height of 5 feet.

- i. Parameters for visual resource protection that must be met by any structural development on the site. Future development proposals shall be accompanied by a complete as-built visual analysis demonstrating compliance with these provisions. As viewed from any public viewing area, including Highways 1 and 46, and state coastal waters (between mean high tide and three miles out), all new development shall be sited and designed *to blend in with and be subordinate to the natural landscape*, including but not limited to meeting the following requirements:
 - i.) any vertical structural features that extend above ridgelines as seen from any public viewing area must be minimized to the greatest extent feasible and shall not result in an overall design that fails to blend in with or be subordinate to the natural landscape;
 - ii.) for buildings which will profile against any sky or ocean area as seen from any of the public viewing areas identified above, the roof pitch shall not exceed 25% or the average natural gradient of the ground surface adjacent to the structure, whichever is greater (e.g., if the adjacent slope is 30%, the roof pitch would be limited to 30%);
 - iii.) hip roofs may be used to soften the mass of residences and gable roofs are permissible so long as they are responsive to the landform or do not result in a visual inconsistency with the natural surroundings;
 - iv.) no portion of any residential structures shall exceed 22 feet above natural grade;
 - v.) the sum total footprint of all residences and residentially-related structures (including guest houses, gazebos, garages, etc.) within the building envelopes shall not exceed 7,000 sq. ft. and in no case shall the footprint of any one structure exceed 5,000 sq. ft.;
 - vi.) total coverage of other non-structural impervious surfaces and outdoor activity areas within the residential building envelope, including all parking areas and other areas outside of the building footprints on which development is proposed, shall be limited to a maximum coverage of 7,000 square feet;
 - vi.) the use of reflective roofing and exterior siding materials is prohibited;

- vii.) buildings and other development (including fencing and paving) must use only earth tone and non-reflective exterior materials;
 - viii.) exterior lighting shall be low level and limited to that necessary for safe passage within the designated building envelopes; all lighting fixtures shall be shielded so that neither the lamp or the related reflector interior surface are visible from public viewing areas; floodlighting or spotlighting of ground or water surfaces visible from the public viewing areas shall be prohibited;
 - ix.) building design must incorporate extended eaves, at least 3 feet deep, in order to minimize the potential for window glare;
 - x.) native landscaping shall be used to soften the transition between natural landform and new residences;
 - xi.) new development shall be consistent with all previous County siting and design conditions
- j. Restrictions for future development within the Agricultural Use and Resource Conservation Area that limits such development to:
- i) agricultural production activities as defined by 3.d, above;
 - ii) repairs or maintenance of the roadways authorized by Permit A-3-SLO-99-014;
 - iii) restoration, protection, and enhancement of native habitat and/or sensitive resources (e.g. wetlands);
 - iv) agricultural support facilities directly related to the cultivation of food, fiber, and ornamental plants being undertaken on the site, and a corral available for the joint use of the owners of parcels 1 –9 in the area shown by Exhibit 4. All agricultural support facilities must be consistent with visual resource protection criteria;
 - v) water and wastewater treatment facilities (i.e., water wells and septic systems) necessary to serve residential development in the building envelopes designated by Exhibit 4, provided that such infrastructure facilities are located underground to the greatest degree feasible and located outside of the prime farmland areas indicated by Exhibit 8;
 - vi) public access improvements.; and,
 - vii) fencing consistent with the Deed Restriction criteria.

- k. Restrictions for future development within Agricultural Setback Areas that limits such development to:
 - i) repairs or maintenance of the roadways authorized by Permit A-3-SLO-99-014, and the extension of these roadways to serve any residential development within designated building envelopes that may be approved in the future;
 - ii) development of agricultural support facilities directly related to agricultural production activities (i.e., the cultivation of food, fiber, and ornamental plants) within the Agriculture and Resource Conservation Area. All agricultural support facilities must be consistent with visual resource protection criteria;
 - iii) water and wastewater treatment facilities (i.e., water wells and septic systems) necessary to any residential development within designated building envelopes that may be approved in the future, provided that such infrastructure facilities are located underground to the greatest degree feasible and located outside of the prime farmland areas indicated by Exhibit 8;
 - iv) restoration, protection, and enhancement of native habitat and/or sensitive resources; and
 - v) public access improvements; and
 - vi) fencing consistent with the Deed Restriction criteria.
- l. Restriction for future development within Building Envelopes that limits such development to one single family residence and one guest unit or other allowable accessory structure, outdoor activity areas, and the minimum infrastructure necessary to serve a single family residential use (i.e., one septic system/leachfield, one electrical main, one telephone main, and one cable television main) designed consistent with the visual resource protection criteria.

4. Lateral Access Easement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director the easement for lateral public access and passive recreational use along the shoreline proposed as part of the project. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The area of dedication shall consist of a 50 foot wide easement along the entire width of the property, which will be generally located in the area between the mean high tide line and a line 200 feet inland of the daily high water line, which is understood to be ambulatory from day to day. The easement area shall be located or, over time, relocated further upslope than 200 feet from the mean high tide line where necessary to address topographical and safety constraints, to avoid erosion and to allow safe passage in perpetuity. The recorded document shall include

legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR § 13166, to these coastal development permits. This requirement shall be reflected in the provisions of the offer.

5. Vertical Access Easement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director the easement for vertical public access and passive recreational use to the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The area of dedication shall consist of a 10 foot wide easement between the Highway One right-of-way and the mean high tide line, along a specific route to be determined in consultation with the Executive Director. The recorded document shall include legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR § 13166, to these coastal development permits. This requirement shall be reflected in the provisions of the offer.

6. Storm Water Pollution Prevention Plan. PRIOR TO COMMENCEMENT OF ROADWAY CONSTRUCTION, the applicant shall submit, for Executive Director review and approval, a detailed Storm Water Pollution Prevention Plan that identifies specific construction practices and controls that will be implemented in order to minimize erosion during and after roadway construction. Such measures shall include, but may not be limited to:

- a. timing construction to avoid or minimize grading during the rainy season (November 1 – April 30)
- b. staging construction to minimize the area of bare soil exposed at one time
- c. installing temporary boundary fencing to define grading limits
- d. seeding and/or mulching of exposed soils
- e. maintaining construction access roads free of dirt and sediments
- f. implementing dust control measures
- g. use of filter fabric fences, straw bale barriers, sand bag barriers, and/or sediment traps to intercept and detain sediment contained in storm water runoff
- h. providing temporary waterway crossings for construction equipment where applicable;
- i. covering excavated materials and construction debris stockpiles on a daily basis;
- j. appropriately disposing of, at a licensed landfill, any excess construction or fill material.
- k. Any permanent site plantings, structural controls, etc., necessary for the prevention, treatment and proper conveyance of storm water runoff through the life of the project.

7. Final Roadway Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the applicant shall submit, for Executive Director review and approval, final engineered plans for the approved roadways and associated drainage facilities that revise the alignment of the driveways to lots four through eight in a manner that follows existing topographical contours and minimizes the alterations of natural landforms (i.e., cuts and fills) to the greatest degree feasible.

8. Other Agency Approvals. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, the applicant shall submit written evidence that the necessary approvals for roadway construction have been obtained from the following regulatory agencies, or that no such approvals are required:

- a. U.S. Army Corps of Engineers
- b. U.S. Fish and Wildlife Service
- c. Regional Water Quality Control Board
- d. California Department of Fish and Game

Should any additional wetland areas be documented on the property through the U.S. Army Corps of Engineers review, confirmation that the roadways do not encroach 100 feet of any such wetlands, or revised roadway plans that comply with this setback requirement, must be submitted for Executive Director review and approval.

9. Removal of Existing Fence Posts. PRIOR TO THE COMMENCEMENT OF ROADWAY CONSTRUCTION, the applicant shall submit, for Executive Director review

and approval, evidence that the fence posts previously installed around the wetland area of the site have either been removed in their entirety, or that a Coastal Development Permit has been obtained which allows for their retention and/or relocation in compliance with the Deed Restriction required by Special Condition 3 above.

VIII. DE NOVO FINDINGS AND DECLARATIONS

A. Background

On September 10, 1998, the San Luis Obispo County Planning Commission conditionally approved Development Plan/Coastal Development Permit D970195D for the grading and construction of roadways, and for the adjustment of two building sites designated by a previous lot line adjustment. This decision was appealed to the Board of Supervisors, where on January 26, 1999, the appeal was denied and the Planning Commission's conditional approval was upheld.

Upon receiving notice of this action, Commission staff investigated the history of the project, and determined that lot line adjustment associated with D970195D (COAL 94-130, approved by the San Luis Obispo County Subdivision Review Board on September 11, 1995) had not been properly noticed. According to both the Commission's and County's records, the County did not provide the Notice of Final Local Action required by Section 23.02.039 of the CZLUO and Section 13110 of the Commission's Administrative Regulations before a coastal development permit can become effective. Similarly, the Commission had not been noticed of the two Conditional Certificates of Compliance for two of the lots affected by the adjustment, granted by the County prior to its approval of the lot line adjustment. As requested by Commission staff, the County provided the required Final Local Action Notices for the lot line adjustment and the Conditional Certificates of Compliance; Commission staff received these notices on April 23, 1999.

As evidenced by the local record for the lot line adjustment, the County review focused on siting future development in a manner that would avoid geologic hazards and prevent adverse impacts to scenic, natural, and archaeological resources. A detailed assessment of the visibility of future development from Highway One, as well as from shoreline areas that are used by marine mammals as haul-out areas, was conducted at the local level, and building envelopes and guidelines for future residential development were accordingly specified. In addition, the County Department of Agricultural reviewed the project's impact on the agricultural viability of the site and concluded that the project would have an insignificant impact.

However, fundamental issues regarding the size and orientation of the residential lots in relationship to the LCP's directive to maintain the maximum amount of land in agricultural production, as well as other unresolved issues such as the visibility of the building envelopes from Highway 46, wetland setbacks, and the need to provide for public led to the

Commission's appeal of both the roadway project and the lot line adjustment (the roadway project also had another appellant). The Conditional Certificates of Compliance previously granted for two of the existing lots were not appealed, based upon staff's review and conclusion that they were legal lots appropriately approved consistent with LCP requirements. The other 8 non-conditional certificates of compliance were also reviewed by staff and determined to be valid.

Commission staff scheduled the appeals of the roadway project and lot line adjustment for Substantial Issue hearing at the Commission's June 1999 meeting, but this hearing was postponed at the applicant's request. The appeals were then presented to the Commission at the August 1999 meeting, where the hearing was continued until October 1999 in order to resolve various issues related to the protection of visual and agricultural resources, as well those issues related to the provision of public access. Due to unforeseen circumstances of the applicant's representative, it was not possible to adequately respond to the issues raised at the August Commission meeting in time for an October hearing. This staff report and recommendation represents the culmination of the additional research and negotiations between staff and the applicant's representative that have occurred since the August hearing, in an attempt to address the Coastal resource issues identified by the Commission.

B. Project Descriptions

The two projects involve a lot line adjustment and roadway construction intended to serve future residential development on a 746-acre agricultural site. As originally approved by San Luis Obispo County, A-3-SLO-99-032 involved the adjustment of 10 lots ranging in size from 1.39 acres to 318.42 acres into 8 residential lots ranging in size from 20.9 acres to 54.9 acres and total 270 acres, and two agricultural lots of 243.8 and 226.4 acres. The grading/roadway project (A-3-SLO-99-014) involved the grading and construction of approximately 19,860 linear feet (3.76 miles) of access roads to serve the adjusted lots, which generally equates to 18 acres of site disturbance, and relocation of two designated building sites identified as part of the lot line adjustment.

In response to the issues identified in the appeals of this project, the applicant has recently revised the project (please see Exhibits 3, 4, and 5). As revised, the lot line adjustment will result in 8 residential parcels (Parcels 1 – 8) that range in size from 20 acres to 39.06 acres and total 204 acres, and one 542.08-acre agricultural lot (Parcel 9). Future residential development is limited to specific building envelopes on each parcel that range from 0.23 acres to 1.92 acres in size, and total 10.69 acres. The 8 residential lots also include agricultural setback areas that range in size from 4.87 acres to 15.18 acres, and total 50.72 acres. The remainder of the 8 residential lots (approximately 144 acres) have been designated as Agricultural Use and Resource Conservation areas, where agricultural and resource conservation activities can be pursued by either the residential lot owner(s) and/or the owner/operator of the large agricultural parcel. In combination with Parcel 9, this results in 684.55 acres (92%) of the site as being available for agricultural and resource

conservation purposes. Other revisions to the project include a reduction in new roadway construction by approximately 5,350 feet, and the incorporation of an offers to dedicate both a lateral coastal access easement along the shoreline across all 9 lots into the project; and a vertical access from Highway One to the sea along the northern property line.

Existing lot configurations are shown by Exhibit 6. The originally proposed lot line adjustment approved by San Luis Obispo County is shown by Exhibit 7. The currently proposed lot line adjustment is illustrated by Exhibit 4. Table 1, on the following page of this report, compares the existing and proposed sizes of each lot.

Table 1: Comparison of original and currently proposed lot line adjustments.

Parcel #	Existing Acreage	Previously Proposed Acreage³	Currently Proposed Acreage
Parcel #1	318.42	37.4	20.0
Parcel #2	8.76	29.7	20.65
Parcel #3	67.72	27.1	23.44
Parcel #4	168.02	22.8	32.87
Parcel #5	61.02	20.9	25.91
Parcel #6	59.80	29.7	21.21
Parcel #7	19.59	47.6	20.70
Parcel #8	7.76	54.9	39.06
Parcel #9	1.39	243.8	542.08
Parcel #10	2.80	226.4	0

Table 2: Quantities of land dedicated for agricultural and residential uses.

Parcel #	Total Acreage	Acreage within Agricultural Use and Resource Conservation	Acreage within Agricultural Setback	Building Envelope Acreage
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³ The figures in the “Previously Proposed Acreage” Column (as well as the Existing Acreage Column) represent the parcel acreages identified by the San Luis Obispo County Notice of Final Local Action for the original lot line adjustment approved by the County. These figures are different from the acreages for the original lot line adjustment submitted by the applicant’s representative, but do not have a substantive effect on the Commission’s consideration of the appeals or permits.

		Area		
1	20.00	4.82	13.75	1.43
2	20.65	13.35	7.07	0.23
3	23.44	16.14	6.28	0.98
4	32.87	28.94	2.45	1.48
5	25.91	17.14	7.93	0.84
6	21.29	15.09	4.61	1.59
7	20.70	14.23	5.68	0.79
8	39.06	34.19	4.87	1.92
9	542.08	540.65	0	1.43
Totals	746.00	684.55	50.72	10.69

C. Project Location

The projects are located west of Highway One, on an agricultural site of 746 acres, approximately $\frac{3}{4}$ of a mile north of Villa Creek Road and 3 miles south of Harmony, in the North Coast Planning Area of San Luis Obispo County (please see Exhibit 3). This site, also known as “Middle Ranch”, has previously been used for cattle grazing, and is adjacent to “North Ranch” and “South Ranch”, which are currently used for grazing.

Site topography is bowl like, with hills and the coastal ridge surrounding the valley in the center of the property where the stock pond is located. Spectacular views of the coastline and inland areas are available from the top of these hills, as shown in the photographs attached as Exhibit 13. In recognition of the natural and scenic values of this section of coastline, the LCP designates the western portion of the site as a Sensitive Resource Area (please see Exhibit 2).

A large stock pond, which is also considered a wetland, exists on the site, as does an old farmhouse and an unpaved agricultural road. As observed by Commission staff on a recent site visit, other wetland areas, in addition to the stock pond, exist on the site. The applicant’s representative has attempted to map these areas in updated Environmental Constraints Map, attached to this report as Exhibit 5. Ellysly Creek runs through the site at its eastern boundary with Highway One.

In addition to wetland and riparian habitats, the site provides important habitat values for marine mammals, which use the shoreline as haul-out areas. The site is also known to

provide foraging habitat for raptors including the Bald eagle (listed as Endangered by the State Endangered Species Act and threatened by the Federal Endangered Species Act) and the Golden eagle (considered a California Species of Special Concern by the Department of Fish and Game).

The site is also known to contain archaeological resources, which were partly evaluated during the local review of the lot line adjustment. During this review an archaeologically sensitive area was identified adjacent to the proposed access road. Additional archaeologically sensitive areas may exist on the site, but have not been fully evaluated or mapped.

D. Agricultural Resources

1. Applicable Policies:

LCP Policy 1 for Agriculture states in part:

Prime agricultural land shall be maintained, in or available for, agricultural production unless: 1) agricultural use is already severely limited by conflicts with urban uses; or 2) adequate public services are available to serve the expanded urban uses, and the conversion would preserve prime agricultural land or would complete a logical and viable neighborhood, thus contributing to the establishment of a stable urban/rural boundary; and 3) development on converted agricultural land will not diminish the productivity of adjacent prime agricultural land.

Other lands (non-prime) suitable for agriculture shall be maintained in or available for agricultural production unless: 1) continued or renewed agricultural use is not feasible; or 2) conversion would preserve prime agricultural land or concentrate urban development within or contiguous to existing urban areas which have adequate public services to serve additional development; and 3) the permitted conversion will not adversely affect surrounding agricultural uses.

LCP Policy 2 for Agriculture provides:

Land division in agricultural areas shall not limit existing or potential agricultural capability. Divisions shall adhere to the minimum parcel sizes set forth in the Coastal Zone Land Use Ordinance. Land divisions for prime agricultural soils shall be based on the following requirements:

- a. The division of prime agricultural soils within a parcel shall be prohibited unless it can be demonstrated that existing or potential

agricultural production of at least three crops common to the agricultural economy would not be diminished.

- b. The creation of new parcels whose only building site would be on prime agricultural soils shall be prohibited.
- c. Adequate water supplies are available to maintain habitat values and to serve the proposed development and support existing agricultural viability.

Land divisions for non-prime agricultural soils shall be prohibited unless it can be demonstrated that existing or potential agricultural productivity of any resulting parcel determined to be feasible for agriculture would not be diminished. Division of non-prime agricultural soils shall be reviewed on a case-by-case basis to ensure maintaining existing or potential agricultural capability.

(This may lead to a substantially larger minimum parcel size for non-prime lands than identified in the Coastal Zone Land Use Ordinance. Before the division of land, a development plan shall identify parcels used for agriculture and non-agriculture use if such uses are proposed. Prior to approval, the applicable approval body shall make a finding that the division will maintain or enhance agriculture viability.)

LCP Policy 3 for Agriculture identifies requirements for non-agricultural uses on agricultural lands intended to supplement the agricultural use. Among these requirements, an agricultural and/or open space easement must be granted to the County for all lands that are not a part of the supplemental non-agricultural development.

LCP Policy 4 for Agriculture requires:

A single-family residence and any accessory agricultural buildings necessary to agricultural use shall, where possible, be located on other than prime agricultural soils and shall incorporate whatever mitigation measures are necessary to reduce negative impacts on adjacent agricultural uses.

LCP Policy 6 for Agriculture states:

In some portions of the coastal zone where historical land divisions created lots that are now substandard, the Land Use Element shall identify areas where parcels under single contiguous ownership shall be aggregated to meet minimum parcel sizes as set forth in the Coastal Zone

Land Use Ordinance. This is particularly important for protection of prime agricultural lands made up of holdings of small lots, that would not permit continued agricultural use if sold individually.

LCP Policy 7 for Agriculture states:

Water extractions consistent with habitat protection requirements shall give highest priority to preserving available supplies for existing or expanded agricultural uses.

CZLUO Section 23.04.024b states:

b. Size based upon existing use. Where a legal lot of record is developed with agricultural uses at the time of application for land division, the minimum size for a new parcel shall be based on the type of existing agricultural use, with the required minimum being the largest area determined by the following tests. Where a site contains more than one agricultural use, each new parcel shall satisfy the minimum size for its respective use:

(1) Crop production: ...

...Grazing

320 acres

CZLUO Section 23.04.024f provides:

f. Overriding requirements for division of non-prime agricultural soils. Land divisions on non-prime agricultural soils as defined by this title shall be subject to the following requirements:

(1) Mandatory findings. A proposed land division shall not be approved unless the approval body first finds that the division will maintain or enhance the agricultural viability of the site.

(2) Application content. The land division application shall identify the proposed uses for each parcel.

Section 23.04.050 of the CZLUO states, in relevant part:

23.04.050 – Non-Agricultural uses in the Agriculture Land Use Category:

- a. Sighting of structures.** A single-family dwelling and any agricultural accessory buildings supporting the agricultural use shall, where feasible, be located on other than prime soils and shall incorporate mitigation measures necessary to reduce negative impacts on adjacent agricultural uses.

2. Analysis:

LCP Policy 1 for Agriculture requires that lands suitable for agriculture be maintained in, or available for, agricultural production unless, among other reasons, the permitted conversion will not adversely affect surrounding agricultural uses. Similarly, CZLUO Section CZLUO Section 23.04.024f requires that land divisions maintain or enhance the agricultural viability of the site, while Section 23.04.050(a) requires that single family dwellings and accessory buildings reduce negative impacts on agricultural uses. LCP Policy 4 for Agriculture requires residential development on agricultural land to incorporate whatever mitigation measures are necessary to reduce negative impacts on adjacent agricultural uses. Thus, a primary focus of the LCP's agricultural protection policies is to prevent conversions or land divisions of agricultural lands that would negatively impact agricultural production.

The original lot line adjustment approved by the County is inconsistent with this objective because it converts more agricultural land than necessary to accommodate residential development. As approved by the County, residential lots ranged in size from 21 to 55 acres each, which is clearly more than what is required to accommodate residential development⁴. This would have resulted in up to 270 acres of agricultural land being converted to residential use, thereby reducing the agricultural productivity of the site and jeopardizing the viability of agricultural operations. In addition, this approval could have set a precedent for the adjustment of other similarly situated non-conforming agricultural lots that would have a cumulative adverse impact on the viability of agriculture in the region.

The first step in addressing this problem was for Commission staff to undertake a thorough analysis of alternative lot configurations that would better protect agricultural use of the site and surrounding area. Fundamental coastal resource constraints that were applied to this analysis included the need to avoid the creation of building envelopes that would be visible from Highway One or other public areas, or located on steep slopes, prime agricultural land, or sensitive habitats. The LCP's minimum lot size of 20 acres in rural agricultural areas was also considered.

Alternative configurations that were analyzed included: locating the residential lots closer to Highway One, along the existing agricultural road; and, locating the residential lots on the

⁴ The minimum lot size for a parcel within an agricultural designation can be no less than 20 acres, but may be larger depending upon the type of agricultural use, as established by Section 23.04.024 of the CZLUO.

western slope of the first hill west of Highway One and north of the access road. Staff conducted numerous site visits, and met with the applicant's representatives on many occasions, to discuss these alternatives. Through this evaluation process, it was determined that these alternatives would not be more protective of agriculture because the eastern portion of the site is more agriculturally productive. This is due to the following factors which make the central and eastern portion of the property more suitable for grazing: the topography is generally less steep than the western portions of the site; it is more protected from the predominant westerly winds; and, the central portion of the site contains the best agricultural soils (please see Exhibits 8 and 9). In addition, the following factors make the central and eastern portion of the site less suitable for residential development from a coastal resource protection standpoint: eucalyptus trees used by foraging raptors are located in this area; a known archaeological site is located in this area; and, certain portions of this area would be visible from Highway One.

Another alternative that was considered was the option of requiring that the lots be consolidated into a single agricultural lot pursuant to Policy 6 cited above. This policy, however, is only applicable to areas where the Land Use Element identifies that parcels under single contiguous ownership shall be aggregated to meet minimum parcel sizes. The Land Use Element has not identified the project site as such an area. Without consolidating the existing lots, it is impossible for all of the adjusted lots to meet the minimum lot size of 320 acres for grazing uses, as established by CZLUO Section 23.04.024b and called for by LCP Policy 2 for Agriculture.

Given the lack of superior alternatives for the location of the residential lots, the next step was to attempt to reduce the extent of agricultural conversion that would result from the proposed adjustment to the greatest degree feasible. As reflected in the revised proposal submitted by the applicant, the size of each residential parcel has been reduced and clustered in the southwestern portion of the parcel to the degree that the 20-acre lot minimum and natural topography will allow. Moreover, the applicant has restricted the extent of residential use allowed on the adjusted parcels to building envelopes that total 10.69 acres, established agricultural setbacks for these building envelopes totaling 50.72 acres, and has restricted the use of the remainder of the site (684.55 acres) to agricultural and resource conservation purposes.

The applicant has also reduced the conversion of agricultural land associated with roadway construction by eliminating a significant stretch of road, and reconfiguring the approach to lots 4–9, for an overall reduction of approximately 5,350 linear feet of roadway. With a typical roadway width of 20 feet, this reduction will avoid the conversion of almost 2.5 acres of agricultural land.

While the revised projects represent significant improvements over the original proposals in terms of minimizing impacts to agriculture, additional measures are needed to ensure that the agricultural productivity of the site and surrounding land will be effectively protected.

These measures, which range from defining what constitutes an agricultural activity to specifying the particular circumstances in which fencing is allowed, are critically important elements that will impact the ability of the proposed Agricultural Use and Resource Conservation Area's ability to preserve the agricultural productivity and viability of the site. Other such measures include the need to record a Right to Farm statement, which recognizes that residential development shall not interfere with the ability of adjacent agricultural operations to continue, and a prohibition against future subdivisions to prevent any reduction in the area of the site reserved for agricultural use. Finally, the need to specifically identify the particular uses that are allowed within the proposed Building Envelopes, Agricultural Setback Areas, and the Agricultural Use and Conservation Area are essential ingredients to preventing the lot line adjustment and future residential development from adversely affecting the agricultural productivity of the site. To ensure that such measures are incorporated into the project, and will be carried out in perpetuity, Special Condition 3 requires that Deed Restrictions be recorded for each of the newly created parcels that embody these provisions.

In terms of prime agricultural soils, LCP Agricultural Policies 2b and 4, as well as CZLUO Section 23.04.050 call for non-agricultural development and agricultural accessory structures to be located outside of areas containing prime agricultural soils. The limited areas of prime agricultural soils on the site (shown by Exhibit 8) will be retained within the proposed Agricultural Use and Resource Conservation area. In addition, the Deed Restrictions required by Special Condition 3 requires all structures, as well as any water or wastewater treatment infrastructure, to avoid areas of prime soils.

Another section of the LCP that is relevant, but not directly applicable, to the proposed lot line adjustment is Policy 3 for Agriculture, which identifies requirements for non-agricultural uses on agricultural lands that are intended to supplement the agricultural use. As opposed to such supplemental uses, single-family residences are specifically allowed by the LCP on agricultural lands, and are considered to be a part of, rather than supplementary to, agricultural use. However, this project presents a problem not specifically contemplated by the LCP, namely, how to address the impact of residential development on non-conforming lots within an agricultural area on existing agricultural uses.

Policy 3, while not directly germane, provides some guidance on how non-agricultural uses should be sited, designed, and restricted to protect agricultural resources to meet the broad agricultural protection policies of the LCP and, by extension, the Coastal Act. For example, part e of this Policy calls for clearly defined buffer areas between agricultural and non-agricultural uses. Another important aspect of this Policy is the requirement that an agricultural and/or open space easement be granted to the County for all lands that are not a part of the supplemental non-agricultural development. In the case of the proposed lot line adjustment, the provisions of Policy 3 are generally satisfied by the recommended conditions of approval. In particular, Special Condition 3 requires recordation of Deed Restrictions (as opposed to easements) that will maintain all areas of the site outside of the

residential building envelopes for agricultural and resource conservation purposes, and will establish buffer areas between agricultural and non-agricultural areas.

A final concern regarding the projects' impacts on agricultural resources has to do with the availability of water to serve non-agricultural development, and whether additional extractions of groundwater to serve such development will limit water supplies necessary to support agricultural production. As required by LCP Policy 7 for Agriculture, the highest priority for the use of new water extractions, which must be consistent with habitat protection, is to preserve available supplies for existing or expanded agricultural uses. To ensure compliance with this requirement, Special Condition 3e requires confirmation that any water extractions necessary to serve non-agricultural uses shall not adversely effect wetland and riparian habitats on the site, nor limit opportunities for continued or expanded agricultural uses, during the future coastal development permit reviews required for residential development.

3. Conclusion:

The lot line adjustment and roadway projects, as revised by the applicant and conditioned by the Commission, are consistent with LCP standards protecting agricultural lands because the conversion of prime agricultural soils have been avoided, and the conversion of non-prime agricultural land has been minimized to the degree that the agricultural viability of the site and surrounding area will be maintained. The revised lot configuration, when compared to the potential for residential development to occur in an unconsolidated fashion on each of the non-conforming lots as currently configured, is a betterment towards preserving the agricultural viability of the site, especially in light of the provisions of the Deed Restrictions required by Special Condition 3.

E. Sensitive Habitats

1. Applicable Policies:

LCP Policy 1 for Environmentally Sensitive Habitats states:

New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area.

LCP Policy 2 for Environmentally Sensitive Habitats provides:

As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate.

LCP Policy 5 for Environmentally Sensitive Habitats states:

Coastal Wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved and where feasible, restored.

LCP Policy 18 for Environmentally Sensitive Habitat provides:

Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved.

Policy 19 for Environmentally Sensitive Habitats requires:

Development adjacent to or within the watershed (that portion within the coastal zone) shall be sited and designed to prevent impacts which would significantly degrade the coastal habitat and shall be compatible with the continuance of such habitat areas. This shall include evaluation of erosion and runoff concerns.

Policy 36 for Environmentally Sensitive Habitat Areas, entitled “Protection of Kelp Beds, Offshore Rocks, Rocky Points, Reefs and Intertidal Areas”, states:

Uses shall be restricted to recreation, education and commercial fishing. Adjacent development shall be sited and designed to mitigate impacts that would be incompatible with the continuance of such habitat areas.

CZLUO Section 23.07.164e requires the following specific findings, applicable to the project, to be made when approving development in Sensitive Resource Areas:

- (1) The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design.

- (2) Natural features and topography have been considered in the design and siting of all proposed physical improvements.

...

CZLUO Section 23.07.166c identifies the following minimum site design and development standard for projects that may impact wetlands or other aquatic habitats as follows:

- c. Construction and landscaping activities shall be conducted to not degrade lakes, ponds, wetlands, or perennial watercourses within an SRA through filling, sedimentation, erosion, increased turbidity, or other contamination.

CZLUO Section 23.07.170b requires the following specific findings to be made when approving new development within or adjacent to Environmentally Sensitive Habitats:

- (1) There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.
- (2) The proposed use will not significantly disrupt the habitat.

CZLUO Section 23.07.172 provides, in relevant part:

23.07.172 – Wetlands.

Development proposed within or adjacent to (within 100 feet of the upland extent of) a wetland area shown on the Environmentally Sensitive Habitat Maps shall satisfy the requirements of this section to enable issuance of a land use or construction permit. These provisions are intended to maintain the natural ecological functioning and productivity of wetlands and estuaries and where feasible, to support restoration of degraded wetlands.

- a. **Location of development:** Development shall be located as far away from the wetland as feasible, provided that other habitat values on the site are not thereby more adversely affected.

...

- a. **Wetland setbacks:** New development shall be located a minimum of 100 feet from the upland extent of all wetlands, except as provided by subsection d(2). If the biological report required by Section 23.07.170 (Application Content) determines that such setback will provide an insufficient buffer from the wetland area, and the applicable approval

body cannot make the finding required by Section 23.07.170b, then a greater setback may be required.

(1) Permitted uses with wetland setback: Within the required setback buffer, permitted uses are limited to . . . roads when it can be demonstrated that:

- (i)** Alternative routes are infeasible or more environmentally damaging.
- (ii)** Adverse environmental effects are mitigated to the maximum extent feasible.

2. Analysis:

Four characteristics of the project site qualify certain areas of the site as a Sensitive Resource Area and/or and Environmentally Sensitive Habitat. The first relates to the portion of the site fronts on the Pacific Ocean, and the fact that this rocky intertidal area is used by marine mammals as haul-out areas. In fact, the LCP specifically maps the shoreline area of the site as a Sensitive Resource Area (please see Exhibit 2).

The second site characteristic that qualifies as an Environmentally Sensitive Habitat is the presence of scattered wetlands. These include the three wetlands identified in the updated Environmental Constraints map prepared by the applicant and attached as Exhibit 5. However, based on the site visits that have been conducted by Commission staff, during which significantly wet areas were observed elsewhere on the site, it can not be concluded that the submitted map depicts *all* wetlands that may exist on the site.

The third important habitat value provided by the site is the fact that it is used by raptors for foraging. According to the 1995 County staff report for the lot line adjustment, Dr. V.L. Holland and Jennifer Langford jointly prepared biological assessments of the site, and identified that Golden and Bald eagles use the site as a foraging area. The Bald eagle is listed as endangered under the California Endangered Species Act, and listed as threatened under the Federal Endangered Species Act. The Department of Fish and game considers the Golden eagle to be a California Species of Special Concern.

The fourth sensitive habitat contained on the site is Ellysly Creek, which parallels Highway One at the entrance to the site. In addition to supporting riparian vegetation, the creek may also provide habitat for the Tidewater goby, listed as endangered by the Federal Endangered Species Act.

To protect these resources, the projects, as well as the local approvals, incorporate specific measures intended to prevent negative impacts and allow for continued biological productivity. With respect to marine mammals, the project was designed in coordination with the National Marine Fisheries Service. As a result of this coordination, Condition 3h

of the local approval of the lot line adjustment requires future residential development to demonstrate that no activity area of the development will be visible from marine mammal haul-out points (non-activity portions of the structures such as a roof or chimney may be visible from such areas). In addition, Condition 3I of the local approval requires that CC&R's inform all property owners of the presence of marine mammals that are sensitive to human intrusion and/or disturbance. This must include an explanation of the sensitivity of the animal, examples of possible disturbance, and a disclosure that disturbance of the animals may be considered harassment and is illegal under the Marine Protection Act. These CC&R's must be developed in consultation with the National Marine Fisheries Service, and subsequently reviewed and approved by the San Luis Obispo County Department of Planning and Building.

With respect to foraging habitat for Bald and Golden eagles, the 1995 County staff reports states that the consulting biologists recommended that large areas of the site be preserved in open space, that wetlands be revegetated and enhanced, and that residential development be clustered in the rear portion of the site. These measures, which were incorporated in to the local conditions of approval, have been improved upon by the currently recommended conditions of approval; open space has been maximized, residential development is more tightly clustered and restricted, and wetland resources are protected from future development (please see wetland discussion below). In addition, the County's approval of the roadway project prohibits construction in the area near the Eucalyptus trees that are used by eagles during the eagle's breeding and fledging period (April through July).

Regarding Ellyslly Creek, the project will not result in any in-stream alterations or removal of riparian vegetation, and involves only minor modifications to the existing creek crossing (i.e., the addition of railings). Thus, no negative impacts to the habitat values of the creek are expected. This will be confirmed by Special Condition 8, which requires that the applicant provide evidence that the Department of Fish and Game and the U.S. Fish and Wildlife Service have reviewed and approved the roadway project, or that no such approvals are required.

Finally, with respect to wetlands, all of the proposed building envelopes, and most of the new roadway will be setback at least 100 feet from the identified wetlands. However, in one location along the southern side of the largest wetland area, the proposed road encroaches within approximately 30 feet of the wetland. Section 23.07.172a of the CZLUO requires that development be located as far away from wetlands as feasible, provided that other habitat values on the site are not thereby more adversely affected. Part d of the same ordinance requires that new development shall be located a minimum of 100 feet from the upland extent of all wetlands, except where a setback adjustment is necessary to accommodate a principal permitted use. Roads may be allowed within the required setback if it is demonstrated that alternative routes are infeasible or more environmentally damaging and that adverse environmental effects are mitigated to the maximum extent feasible.

The limited encroachment of the roadway within the 100 foot setback area is approvable under the LCP because the applicant has demonstrated that the required exception findings of section 23.07.172(d)(I) can be made. First, alternative routes further south or to the north of the stock pond that would observe the 100 foot buffer would be more environmentally damaging because they would involve either significantly more grading and disturbance or construction and grading on steep slopes. This would create more significant impacts to the wetland due to slope instabilities and sedimentation problems related to roadway design. Second, the primary adverse environmental effects of the proposed road construction within the buffer are mitigated to the maximum extent feasible through Special Condition 6, which requires the implementation of a storm water pollution prevention plan. This includes standards to control runoff and erosion both during and after construction.

As previously noted, staff observations of the site indicate that there may additional wetland areas on the site that have not been delineated by project plans, or the submitted Environmental Constraints Map, to date. This concern is addressed by Special Condition 8, which requires the applicant to submit written evidence that the necessary approvals for roadway construction have been obtained from the U.S. Army Corps of Engineers (among other regulatory agencies). Should any additional wetland areas be documented on the property through the U.S. Army Corps of Engineers review, confirmation that the roadways do not encroach 100 feet of any such wetlands, or revised roadway plans that comply with this setback requirement, must be submitted for Executive Director review and approval.

3. Conclusion:

As conditioned, the currently proposed lot line adjustment and roadway project will not have an adverse impact on the sensitive habitat values provided by the site, and will protect the biological productivity of these areas, consistent with LCP Policies and Ordinances cited above.

F. Visual Resources

1. Applicable Policies:

Policy 1 for Visual and Scenic resources requires:

Unique and attractive features of the landscape, including but not limited to natural landforms, scenic vistas and sensitive habitats are to preserved and protected, and in visually degraded areas restored where feasible.

Policy 2 for Visual and Scenic Resources provides:

Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created “pockets” to shield development and minimize visual intrusion.

Policy 4 for Visual and Scenic Resources addresses new development in rural areas, and states:

New development shall be sited to minimize its visibility from public view corridors. Structures shall be designed (height, bulk, style) to be subordinate to, and blend with, the rural character of the area. New development which cannot be sited outside of public view corridors is to be screened utilizing native vegetation; however, such vegetation, when mature, must also be selected and sited in such a manner as to not obstruct major public views. New land divisions whose only building site would be on a highly visible slope or ridgetop shall be prohibited.

Policy 5 for Visual and Scenic Resources requires:

Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance.

CZLUO Section 23.04.021c provides:

New land divisions where the only feasible building site would be on slope or ridgetop where a building would be silhouetted against the skyline as viewed from a public road shall be prohibited as required by Visual and Scenic Resources Policy 4 of the Local Coastal Plan.

2. Analysis:

The proposed development poses adverse impacts to visual and scenic resources primarily through its designation of residential building sites along an undeveloped rural coastal ridgeline. The locations of the building envelopes were defined at the local level in large part to completely eliminate, or allow only extremely limited, visibility from Highway One. The natural topography of the project site now prevents most of the building envelopes from being visible from Highway One. To address the limited instance when one or two of the envelopes may be seen from Highway One, through the narrow ravine in which the access road is located, the County’s approval requires landscaping that will block such views.

Although the proposed building envelopes may not be visible from Highway One, they are visible, at least in part, from other public view corridors, including the shoreline, the ocean, and Highway 46 (at a distance). The local review of the lot line adjustment and roadway projects did not address the impacts to the public view corridors available from these areas.

The applicant has submitted additional information analyzing the potential visual impact of the project from Highway 46. This analysis concludes that any visibility of the structures from Highway 46 will be insignificant, given the brief viewing window available to westbound drivers at the very top of Highway 46, as well as the angle of direct sunlight necessary to reflect back into the drivers view.

Nonetheless, this does not necessarily account for visual impacts that may be perceived by the public at public viewpoints along Highway 46 (there is a significant pullout at the top of 46 that affords spectacular views of the Harmony coast south to Morro Bay). Nor does it address the impacts to scenic views available from the shoreline and ocean (discussed in more detail below). Thus, in order to assure that visual impacts are avoided and minimized, Special Condition 3i contains specific requirements for visual resource protection that must be met by future development. The overall objective of this condition is to ensure that new development will be sited and designed to blend in with, and be subordinate to, the natural landscape, as called for by LCP Policy 4.

In order to minimize visual impacts from the Highway 46 viewshed, Special Condition 3i prohibits future construction from using reflective roofing and exterior siding materials, and requires that such construction use only earth-tone materials and incorporate extended eaves to minimize glare from windows. In addition, Special Condition 3i requires that water and wastewater treatment facilities (i.e., water wells and septic systems) necessary to serve future residential development be located underground to the greatest degree feasible. Special Condition 3i also limits the maximum height and site coverage of future development, and restricts exterior lighting, in order to prevent extremely large and/or brightly lighted development that would be more visible from public viewsheds.

With regard to the building envelopes' visibility from the shoreline and ocean, it is clear that as approved by the County, portions of future development will be visible. In fact, Condition 3h of the County approval specifically allows portions of future development to be visible from shoreline areas, so long as human activity areas are not visible from marine mammal haul out areas along the shoreline. Under this scenario, future development would be highly visible from offshore areas.

The Special Conditions attached to this permit intended to minimize visual impacts from the Highway 46 viewshed (described above) will also help minimize impacts to views available from the shoreline and ocean by limiting the size and glare of new development. They are not adequate, however, to address the requirements of Policy 2, which calls for the

protection of views to and along the ocean, and requires new development should utilize slope created “pockets” to shield development and minimize visual intrusion.

In order to achieve compliance with this Policy, Special Condition 3i requires that any vertical structural features that would extend above the ridgeline as seen from any public viewing area (including up to three miles seaward of the mean high tide line) must be minimized to the greatest extent feasible. Such vertical features are prohibited if they would result in an overall design that fails to blend in with or be subordinate to the natural landscape. Special Condition 3i also minimizes the visual impact of any non-vertical feature that would extend above a ridgeline as seen from a public viewing area by limiting roof pitch to 25% or the natural gradient of the ground surface adjacent to the structure (whichever is greater). This will prevent unnatural structural forms from silhouetting against the sky or ocean. Similarly, hip roofs are encouraged by this condition as a means of softening the mass of future development. Finally, Special Condition 3i requires native landscaping to soften the transition between natural landform and new residences.

With respect to the roadway project, Special Condition 7 requires revised roadway plans that revise the alignment of the proposed driveways so that they follow existing topographical contours and minimize the alteration of natural landforms (i.e., cuts and fills). This will minimize the visibility of the roadways from the Highway 46 viewshed, consistent with LCP Policy 5.

3. Conclusion:

As approved by San Luis Obispo County, future development within the proposed building envelopes would have an adverse impact on the visual and scenic resources enjoyed by the public from Highway 46, the shoreline, and the ocean. In order to avoid and minimize these impacts, Special Conditions have been attached to this permit. Only with these conditions can the project be found to be consistent with LCP Policies for visual and scenic resources cited above.

G. Infrastructure

1. Applicable Policies:

CZLUO Section 23.04.430b

23.04.430 – Availability of Water Supply and Sewage Disposal Services.

- b.** Development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal

systems, except that development of a single-family dwelling on an existing parcel may connect to a community water system if such service exists adjacent to the subject parcel and lateral connection can be accomplished without trunk line extension.

2. Analysis:

CZLUO Section 23.04.430b states that development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal systems. Water to serve future residential development will be obtained from on-site well(s), and wastewater treatment will be provided by on-site septic systems. The applicant has submitted information from the County Environmental Health Department and water consultants (Exhibit 10) that supports a finding of adequate water and wastewater treatment to support future residential development.

First, well and pump tests show that there is adequate water supply, and that water quality would be adequate, although treatment may be necessary based on further analysis. Second, an analysis of onsite wastewater disposal requirements supports a finding that adequate areas for disposal will be available for future residential development, again, with the understanding that further technical analysis of appropriate system locations will be necessary when any future residential development is proposed. This, in combination with the understanding that future residential development proposals will be subject to coastal development permit review and approval, during which further detailed analyses to document the necessary water treatment and septic siting options must be conducted, the Commission finds that the proposed lot line adjustment is consistent with the LCP.

H. Archaeological Resources

1. Applicable Policies:

Policy 1 for Archaeological Resources states:

The County shall provide for the protection of both known and potential archaeological resources. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored at the time of a development proposal to avoid development on important archaeological sites. Where these measures are not feasible and development will adversely affect identified archaeological or paleontological resources, adequate mitigation shall be required.

Policy 6 for Archaeological Resources provides:

Where substantial archaeological resources are discovered during construction of new development, or through non-permit related activities (such as repair and maintenance of public works projects) all activities shall cease until a qualified archaeologist knowledgeable in the Chumash culture can determine the significance of the resource and submit alternative mitigation measures.

2. Analysis:

As stated in the County's 1995 review of the lot line adjustment, Dr. Charles Dills conducted a detailed surface survey of the site to ensure that the adjusted lots, their building sites, and roadway access would avoid degradation of any archaeological sites. The County found the project to be consistent with the above LCP requirements because the archaeological resources that exist on the coastal bluff would not be impacted, and the project was conditioned to require on site monitoring by a qualified archaeologist during the construction of access roads and future residential development.

The 1998 County staff report addressing the proposed roadway project notes that a potentially significant archaeological site was discovered in the area of the existing farmhouse during the initial study of the lot line adjustment. The County approved the roadway project with an additional condition regarding Archaeological Resources (Condition 7) that requires the portion of the roadway within 400 feet of the archaeologically sensitive area designated by the Environmental Constraints Map (Exhibit 5) to be staked and inspected by an archaeologist. The applicant must implement all mitigations proposed by the archaeologist and the County's Environmental Coordinator, which, according to this condition, may include minor route adjustments, placement of fill, and/or monitoring.

The mitigation measures required by the County do not, however, specify that the review of archaeological impacts, and the required on-site monitoring, must be conducted by an archaeologist knowledgeable in the Chumash culture, as required by Policy 6. Nor does the local approval address potential impacts to archaeological resources that may occur through non-permit related activities, as required by Policy 6. As a result, a Special Condition has been attached to this report that supplements the County requirements by requiring that the applicant provide opportunities for a qualified Chumash representative to participate in the archaeological reviews and observations, including observations of any future agricultural activities that involve subsurface disruptions. In the event that either the archaeologist and/or Chumash representative identify that activities being conducted on the site may be impacting archaeological resources, the activity must cease until the appropriate mitigations are developed in coordination with the Executive Director and the State Historic Preservation Officer.

c. Conclusion:

Only with the additional archaeological conditions described above can the project be found to be consistent with the archaeological resource protection requirements of the LCP.

I. Public Access and Recreation

1. Applicable Policies:

LCP Policy 12 for Agriculture addresses Access in Agricultural Areas, and states:

Consistent with other LCP access policies which provide for access dedications, the county shall require at the time a Coastal Development permit is processed, the establishment of vertical and/or lateral access to the beach for which no established vertical or lateral access exists. The County shall close undeveloped trails which are hazardous or conflict with existing agricultural operations and when an alternative safe, existing or potential access is available for the same beach. Access trails shall be located on agriculturally unsuitable land to the greatest extent possible. Where it is not possible to locate access on agriculturally unsuitable land, trails shall be located at the edge of the field and/or along parcel lines that would not significantly disrupt the agricultural operations.

Improvements and management of accessways shall be provided in agricultural areas adequate to avoid adverse impacts on, and protect the productivity of, adjacent agricultural soils. Improvement and management practices shall include, but not be limited to, the following:

Limit the seasons of the year when public access is permitted by using seasonal barriers and signs; and
Develop access trails with fences or other buffers to protect agricultural lands.

Consistent with the access section of the CZLUO access requirements may be waived if it can be conclusively demonstrated that the adverse impacts on agricultural operations are substantial and cannot be feasibly mitigated.

CZLUO Section 23.04.420 states, in relevant part:

23.04.420 – Coastal Access Required.

c. When new access is required. Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) Access would be inconsistent with public safety, military security needs or the protection of fragile coastal resources; or
- (2) The site already satisfies the provisions of subsection d of this section; or
- (3) Agriculture would be adversely affected; ...

d. Type of access required:

(1) Vertical Access:

(ii) In rural areas: In rural areas where no dedicated or public access exists within one mile, or if the site has more than one mile of coastal frontage, and accessway shall be provided for each mile of frontage

(2) Lateral access dedication: All new development shall provide a lateral access dedication of 25 feet of dry sandy beach available at all times during the year. Where topography limits the dry sandy beach to less than 25 feet, lateral access shall extend from the mean high tide to the toe of the bluff.

Coastal Act Section 30210 requires:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30212 states in part::

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
 - (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
 - (2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

2. Analysis

With the revised project, the applicant has provided an offer to dedicate a 200 foot wide lateral coastal access dedication the length of the property landward of the mean high tide land (Exhibit 5). This is a significant public access offer, and will provide an important future link in the California Coastal Trail. In order to incorporate the applicant's offer into the project, Condition 4 requires the recordation of this offer that reflects this aspect of the project.

The applicant has also provided a conditional offer to dedicate a vertical public access along the northern boundary of the property, extending from Highway One to the mean high tide. This is also a significant public access offer, and will provide a greatly needed vertical link to the Harmony coast (currently there is no vertical public access to the shoreline between Cambria and Cayucos (approximately 11 miles). Condition 5 incorporates the applicant's offer into the project. As conditioned, the project is consistent with the public access policies of the LCP and the Coastal Act.

I. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures that would substantially lessen any significant adverse effect that the project may have on the environment.

San Luis Obispo County certified a Negative Declaration for the Lot Line Adjustment on September 11, 1995, and a Negative Declaration roadway project and January 26, 1999. Both of these Negative Declarations include mitigation measures that have been incorporated into the terms of the County's approvals, and are intended to prevent the project from having a significant impact on the environment. These mitigation measures continue to apply to the project, except where they may conflict with the project revisions and conditions of approval adopted by the Commission (please refer to Special Condition 1).

As detailed in the findings of this staff report, and the findings previously adopted by the Commission with respect to the Substantial Issue Determination, the Commission has identified environmental impacts of the project that were not effectively addressed by the

certified Negative Declarations. In order to address these issue, the applicant has revised the projects, and the Commission has adopted Special Conditions of approval, which will prevent the Lot Line Adjustment and roadway projects from having a significant adverse impact on the environment within the meaning of CEQA.